BPS-173 **March 23, 2006**

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 04-2368

UNITED STATES OF AMERICA

v.

JOSEPH BARNETTE
a/k/a JOSEPH BURNETTE
a/k/a ARDELL GRIFFIN
a/k/a EGYPT

Joseph Barnette,
Appellant

(W.D. Pa. Crim. No. 98-cr-00005)
(criminal treated as civil)

Present: RENDELL, AMBRO and GREENBERG, Circuit Judges

Submitted are:

(1) Appellant's request for a certificate of appealability under 28 U.S.C. § 2253(c)(1);

(2) Appellee's response;

(3) Appellant's amended request for a certificate of appealability construed as supplement;

(4) Appellee's response; and

(5) Appellant's reply

in the above-captioned case.

Respectfully,

Clerk

(Continued)

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MMW/SR/clc

O R D E R

The foregoing request for a certificate of appealability is denied. For substantially the reasons given by the District Court in denying the appellant's section 2255 motion, we conclude that the appellant has not made a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). To the extent that the appellant invokes Blakely v. Washington, 542 U.S. 296 (2004), and, ipso facto, United States v. Booker, 543 U.S. 220 (2005), on appeal, we note that these decisions do not apply retroactively to cases on collateral review. Lloyd v. United States, 407 F.3d 608, 613 (3d Cir. 2005).

By the Court,

/s/ Thomas L. Ambro, Circuit Judge

Dated: April 25, 2006

lwc/cc: Jeffrey M. Brandt, Esq.
Laura S. Irwin, Esq.

A True Copy:

Marcia M. Waldron

Marcia M. Waldron, Clerk